

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO et al.,

Debtors.¹
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PROMESA
Title III

Case No. 17-BK-3283 (LTS)
(Joint Administered)

**OMNIBUS MOTION BY THE AVOIDANCE ACTIONS TRUSTEE, SPECIAL CLAIMS
COMMITTEE, AND COMMITTEE TO SUBSTITUTE THE AVOIDANCE
ACTIONS TRUSTEE AS PLAINTIFF IN ADVERSARY PROCEEDINGS
TRANSFERRED TO THE AVOIDANCE ACTIONS TRUST**

To the Honorable United States Magistrate Judge Judith G. Dein:

Drivetrain, LLC ("Trustee"), in its capacity as the trustee of the Commonwealth Avoidance
Actions Trust (the "Avoidance Actions Trust"),² and together with the Special Claims Committee

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² The Confirmation Order provides that "The Avoidance Actions Trust shall consist of the Avoidance Actions Trust Assets. On the Effective Date, the Debtors transferred all of the Avoidance Actions Trust Assets to the Avoidance Actions Trust and, in accordance with section 1123(b)(3)(B) of the Bankruptcy Code, the Avoidance Actions Trust shall have the sole right, authority, and standing to prosecute, settle or otherwise dispose of all Avoidance Actions, including, without limitation, those set forth on Exhibits A and B to the Plan, as of the Effective Date." Order And Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, The Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority [DE 19813] at ¶19.

of the Financial Oversight and Management Board for Puerto Rico (the “Special Claims Committee”) and the Official Committee of Unsecured Creditors of the Debtors (except PBA and COFINA) (“Committee” and together with the Special Claims Committee, the “Pre-Effective Date Plaintiffs”), respectfully file this motion (the “Motion”) to substitute the Trustee as the plaintiff in the adversary proceedings identified in the attached Appendix (collectively, the “AAT Avoidance Actions”).

The movants have filed this Motion in an omnibus fashion to avoid the burden and redundancy associated with preparing and filing nearly identical motions in dozens of adversary proceedings. In support of this Motion, the movants respectfully state as follows:

BACKGROUND

1. In and around April and May of 2019, the Pre-Effective Date Plaintiffs filed approximately 250 adversary proceedings against vendors and suppliers to the Commonwealth of Puerto Rico and other Title III debtors seeking to avoid and recover payments made under fraudulent and preferential transfer theories.

2. These 250 adversary proceedings included the AAT Avoidance Actions.

3. On January 18, 2022, the Court entered the *Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, The Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority* [Docket No. 19813] (“Confirmation Order”), which confirmed the *Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [Docket No. 19784] (the “Plan”).

4. The Plan and Confirmation Order provide for the creation of the Avoidance Actions Trust and the Trustee.

5. Specifically, “[o]n the Effective Date, the Debtors shall transfer all of the Avoidance Actions Trust Assets to the Avoidance Actions Trust and, in accordance with section 1123(b)(3)(B) of the Bankruptcy Code, the Avoidance Actions Trust shall have the sole right, authority, and standing to prosecute, settle or otherwise dispose of all Avoidance Actions, including, without limitation, [the AAT Avoidance Actions] as of the Effective Date.” [Confirmation Order, Docket No. 19813 at 18].

6. As used in the Confirmation Order and the Plan it confirmed, the “Avoidance Actions” include the AAT Avoidance Actions. [*E.g.*, Plan, Docket No. 19784, §1.108 & Ex. A].

7. On March 15, 2022, the Plan became effective and, in accordance therewith, the transactions contemplated by the Plan were consummated, including the appointment of the Trustee as the trustee of the Avoidance Actions Trust. [*See* Docket No. 20349].

RELIEF REQUESTED AND BASIS

8. The Trustee, together with the Special Claims Committee and the Committee, respectfully request an Order, substantially in the form of the proposed order attached as **Exhibit A**, permitting the substitution of the Trustee as the party plaintiff in each of the AAT Avoidance Actions.

9. The Plan, Confirmation Order, and the Avoidance Actions Trust Agreement each grant the Trustee the sole and exclusive “right, authority, and standing to prosecute, settle or otherwise dispose of” the AAT Avoidance Actions that comprise the Avoidance Actions Trust Assets. [*E.g.*, Confirmation Order, Docket No. 19813, ¶¶18-19; Plan, Docket No. 19784, §§78.1-78.6].

10. Additionally, Rule 25(c) of the Federal Rules of Civil Procedure, as made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure and Section 310 of

PROMESA (48 U.S.C. §2170), permits the substitution of parties, and the continuation of an action, where an “[i]nterest is transferred.” *See* Fed. R. Civ. P. 25(c).

11. Thus, as of the effective date of the Plan, and pursuant to the Plan, Confirmation Order, and Avoidance Actions Trust Agreement, the Avoidance Actions Trust has succeeded to the Pre-Effective Date Plaintiffs’ rights and interests in the AAT Avoidance Actions, and now, through the Trustee, has the sole authority to prosecute such actions.

12. As the interests of the Special Claims Committee and the Committee in the AAT Avoidance Actions have been transferred to the Avoidance Actions Trust pursuant to the Plan and Confirmation Order, the Trustee respectfully requests that it be substituted as plaintiff in the AAT Avoidance Actions and all duties of counsel of record to the Special Claims Committee and the Committee be discharged.

13. Likewise, Local Bankruptcy Rule 9010-1(d)(3) permits withdrawal of counsel upon notice to various parties. By the entry of the Confirmation Order and related documents and the filing of this Motion, all relevant standards for withdrawal of appearances by counsel to the transferor parties have been satisfied. The parties have thus established cause to permit withdrawal and deem withdrawn the appearances of counsel of record to the Special Claims Committee and the Committee.

14. Consistent with the relief requested in this Motion, the Trustee, together with the Special Claims Committee and Committee, further request that a form of caption be used for all further filings in the AAT Avoidance Actions identifying the Trustee as the plaintiff and omitting reference to the Pre-Effective Date Plaintiffs as plaintiffs.

15. In the interests of judicial economy, the Trustee is filing this Motion in an omnibus fashion in this jointly administered case. In order to fully provide notice, this form of motion has

also been filed in each applicable adversary proceeding. The Trustee will request that this omnibus Motion, and each motion filed in the adversary proceedings, be heard during the next-scheduled omnibus hearing before the Court.

REQUEST FOR HEARING

16. Pursuant to Federal Rules of Bankruptcy Procedure 9006(d) and 2002(a)(3), the Trustee, the Special Claims Committee, and the Committee hereby request that a hearing on this Motion be scheduled for such date as the Court deems appropriate to consider any objections, joinders, replies or comments by this Court to this Motion.

NOTICE

17. The Trustee has provided notice of this Motion to: (i) the Chambers of the Honorable Laura Taylor Swain; (ii) the Chambers of the Honorable Magistrate Judge Judith G. Dein; (iii) the Office of the United States Trustee for Region 21; (iv) AAFAF; (v) counsel for AAFAF; (vi) counsel for the Oversight Board; (vii) counsel for the Creditors' Committee; (viii) counsel for the Retiree Committee; (ix) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims in COFINA's Title III case; (x) counsel to any other statutory committee appointed in these Title III Cases; and (xi) the defendants listed in the Appendix through their counsel, if known, through their resident agent, or a representative.

WHEREFORE, the Trustee, together with the Special Claims Committee and the Committee, respectfully request entry of an Order, substantially in the form attached as **Exhibit A**, substituting the Trustee as the plaintiff in the AAT Avoidance Actions, permitting the modification of the caption of the AAT Avoidance Actions to reflect the substitution, and granting such other and further relief as the Court deems necessary and proper.

Dated this 12th day of April, 2022

Respectfully submitted by:

/s/ John Arrastia

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on April 12, 2022 I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all appearing parties in the captioned proceeding.

/s/ Juan J. Casillas Ayala

Juan J. Casillas Ayala, Esq., (USDC-PR 218312)

Exhibit A
(Proposed Order)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

-----X
In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO et al.,

Debtors.¹
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PROMESA
Title III

Case No. 17-BK-3283 (LTS)
(Joint Administered)

**ORDER GRANTING OMNIBUS MOTION BY THE TRUSTEE, SPECIAL CLAIMS
COMMITTEE, AND COMMITTEE TO SUBSTITUTE THE AVOIDANCE ACTIONS
TRUSTEE AS PLAINTIFF IN ADVERSARY PROCEEDINGS TRANSFERRED TO
THE AVOIDANCE ACTIONS TRUST**

This matter is before the Court on the *Omnibus Motion by the Avoidance Actions Trustee, Special Claims Committee, and Committee to Substitute the Avoidance Actions Trustee as Plaintiff in Adversary Proceedings Transferred to the Avoidance Actions Trust* (Docket No. _____ in Case No. 17-BK-3283) (“Motion”)² filed jointly by the Avoidance Actions Trustee, the Special Claims Committee, and the Committee. Sufficient cause being shown, it is hereby

ORDERED that:

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² All capitalized terms that are not otherwise defined in this Order shall have the meanings given to them in the Motion.

1. The Motion is GRANTED.
2. The Trustee is substituted as the plaintiff in the AAT Avoidance Actions.
3. The captions of all further filings in the AAT Avoidance Actions shall identify the Trustee as the plaintiff and omit reference to the Pre-Effective Date Plaintiffs as plaintiffs.
4. The Special Claims Committee and Committee are no longer parties in the AAT Avoidance Actions, and their counsel shall be discharged of further responsibility in the AAT Avoidance Actions and their appearances deemed withdrawn.
5. This Order resolves Docket Entry No. _____ in Case No. 17-3283.

SO ORDERED.

Dated: _____, 2022

HON. JUDITH GAIL DEIN
United States Magistrate Judge

APPENDIX

AAT AVOIDANCE ACTIONS

19-00042	19-00160
19-00043	19-00161
19-00044	19-00162
19-00048	19-00183
19-00049	19-00186
19-00051	19-00187
19-00053	19-00188
19-00054	19-00196
19-00055	19-00200
19-00056	19-00202
19-00060	19-00218
19-00062	19-00220
19-00063	19-00222
19-00068	19-00227
19-00075	19-00229
19-00088	19-00232
19-00092	19-00235
19-00093	19-00236
19-00098	19-00239
19-00102	19-00249
19-00114	19-00253
19-00122	19-00255
19-00127	19-00265
19-00129	19-00266
19-00130	19-00268
19-00134	19-00273
19-00143	19-00276
19-00145	19-00440
19-00150	
19-00152	
19-00155	